

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition Regarding Proposed Modifications to Schiller Station

Order Following Pre-Hearing Conference

O R D E R N O. 24,211

September 25, 2003

APPEARANCES: Linda T. Landis, Esq. and Gerald M. Eaton, Esq. for Public Service Company of New Hampshire; Brown, Olson & Wilson, P.A. by Robert A. Olson, Esq. and Susan W. Chamberlin, Esq. for Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Bridgewater Power Company L.P. and Hemphill Power & Light Company; Jasen Stock for the New Hampshire Timberland Owners Association; Peter Britz for City of Portsmouth; Jack Ruderman, Esq. for Office of State Planning and Energy Programs; Office of Consumer Advocate by Michael W. Holmes, Esq. on behalf of residential ratepayers; and Donald M. Kreis, Esq. of the Staff of the New Hampshire Public Utilities Commission.

I. BACKGROUND AND PROCEDURAL HISTORY

Pursuant to 2003 N.H. Laws 21:4, codified as RSA 369-B:3-a, PSNH may "modify or retire" any of its generation assets upon a finding by the New Hampshire Public Utilities Commission (Commission) "that it is in the public interest of retail customers of PSNH to do so" and so long as the Commission provides for the cost recovery of such modification or retirement.

Pursuant to RSA 369-B:3-a, PSNH filed a petition on August 28, 2003 seeking authority to modify its coal-fired Schiller Station in Portsmouth. Specifically, PSNH wishes to

modify Unit No. 5, one of the three operating units at Schiller, to burn wood fuel. PSNH seeks not only a determination that such modification may go forward pursuant to RSA 369-B:3-a, but also that any costs associated with the project may be recovered from ratepayers via PSNH's Stranded Cost Recovery Charge. In its petition, PSNH indicated that it had "identified proposed federal legislation which could provide additional value," in the form of a tax credit for open-loop biomass renewable generation facilities, "if the Schiller Station modification is completed by December 31, 2005." Accordingly, PSNH requested expedited consideration of its petition, sufficient to allow the Company to order the requisite new boiler by mid-November of 2003.

The Commission entered an Order of Notice on September 4, 2003, scheduling a Pre-Hearing Conference for September 17, 2003, waiving the rules requirement of 14 days' notice of such Pre-Hearing Conference and establishing September 12, 2003 as the deadline for intervention petitions. The Office of Consumer Advocate (OCA) entered an appearance on behalf of residential ratepayers on September 2, 2003. Timely intervention petitions were filed by the New Hampshire Timberland Owners Association (NHTOA), Local 1837 of the International Brotherhood of Electrical Workers (IBEW), which is the collective bargaining agent of PSNH's employees at Schiller Station, the Office of

State Planning and Energy Programs (OSP) and four existing wood-fired New Hampshire power producers, Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Bridgewater Power Company, L.P. and Hemphill Power & Light Company, appearing jointly (collectively, the "Existing Wood-Fired Plants"). In addition, the Commission received a petition for limited intervenor status from the City of Portsmouth.

The Pre-Hearing Conference took place as scheduled. The City of Portsmouth indicated that it was not seeking intervenor status but, rather, wished to place certain concerns before the Commission with respect to traffic entering and leaving Schiller Station. Treating the City of Portsmouth intervention petition as withdrawn, the Commission granted the remainder of the intervention petitions without objection. The parties gave statements of their preliminary positions, including matters related to the scope of the Commission's legal authority in the case. Thereafter, the parties and Commission Staff met in a technical session to discuss, *inter alia*, what procedural schedule to propose for the remainder of the docket. On September 18, 2003, Staff submitted a written report of the technical session including a proposed procedural schedule.

II. POSITIONS OF THE PARTIES AND STAFF

A. Public Service Company of New Hampshire

PSNH indicated that it was requesting approval of the project pursuant to RSA 369-B:3-a as well as a determination that cost recovery for the project is appropriate via PSNH's Stranded Cost Recovery Charge (SCRC) mechanism. The Company noted that the converted boiler would be designed to burn approximately 400,000 tons of wood annually, to provide steam to an associated 45-megawatt turbine/generator. The filing indicates that approximately \$69 million of capital investment is required.

According to PSNH, the project is consistent with the public interest in light of the existence in New Hampshire of a sustainable market for low-grade wood, and because the project would result in reduced emissions of nitrogen oxides (NO_x), sulfur dioxide (SO₂), mercury (Hg) and carbon dioxide (CO₂). The savings from the reduction in NO_x and SO₂ compliance costs, and incentives available through New Hampshire's Multiple Pollutant Reduction Program and NO_x Budget Program will be used to offset this capital investment. PSNH also noted that the project is designed to support the Renewable Portfolio Standards and the development of the associated Renewable Energy Certificates (REC) approved in Massachusetts, Connecticut and Maine by providing a source of power that would be eligible for RECs (and

attendant revenue flowing to PSNH's New Hampshire customers). PSNH indicated that its forecast suggests that project revenues (including revenue derived from the sale of RECs) will exceed the project's amortized costs, while allowing PSNH to serve its Transition Service load with reliable and economical power.

According to PSNH, the Commission's approval or disapproval of the project is limited to the standard articulated in RSA 369-B:3-a. Thus, in PSNH's view, the Commission is not charged with considering the economic or environmental impacts of the project apart from the project's effects on PSNH ratepayers.

**B. Pinetree Power, Inc., Pinetree Power-Tamworth, Inc.,
Bridgewater Power Company, L.P. and Hemphill Power &
Light Company**

The Existing Wood-Fired Plants opted to state no position at the Pre-Hearing Conference, beyond noting that issues related to the fuel supply PSNH proposes to use are relevant to the Commission's public interest determination.

C. New Hampshire Timberland Owners Association

The NHTOA indicated that its interest in the case centers on the issue of the wood supply to be used by the modified unit at Schiller Station. The Association stated that its objective is to cause PSNH to agree that some portion of its wood fuel will come from within New Hampshire, and to agree to

some kind of mechanism to assure stability in the state's market for wood fuel.

D. Office of State Planning and Energy Programs

The OSP opted to state no position at the Pre-Hearing Conference.

E. Office of Consumer Advocate

The OCA commended PSNH for examining the possibility of retrofitting one of the Schiller units to use wood as a fuel. The OCA noted that, over the long run, it is likely that PSNH will have to phase out its existing boilers at Schiller Station and, thus, the OCA regards the instant proposal as a first opportunity to consider the appropriate source of replacement power. According to the OCA, the primary focus of this docket should be on the provision of reliable Transition Service energy at a fair rate, with a reasonable provision for who would be responsible for any unrecovered costs. The OCA took the position that if the project goes forward and PSNH is ultimately required to sell the unit below cost, customers should not be responsible for making the utility whole. Finally, the OCA contended that other public policy questions, involving the source of fuel and the environmental effects of the project, are secondary to the project's effect on PSNH's rates.

F. Staff

The Commission Staff indicated that it was favorably inclined toward PSNH's proposal but that it would be conducting a thorough investigation. Staff agreed with OCA that the primary focus of the Commission is the effect of the project on rates, noting that fuel supply issues could be relevant to such an inquiry.

III. COMMISSION ANALYSIS

As noted at the Pre-Hearing Conference, the statutory authority under which this docket proceeds is unusually specific. Often, the Commission is called upon to determine whether a particular utility action is consistent with the public interest generally, in the context of its general responsibility under RSA 363:17-a to serve as "the arbiter between the interests of the customer and the interests of the regulated utilities." In this case, RSA 369-B:3-a requires us to determine whether the proposed modification is "in the public interest of *retail customers* of PSNH" (emphasis added). This would appear to be a limitation on the broader concept of public interest.

We note, however, that the Existing Wood-Fired Plants have explicitly reserved the right to argue that other legal standards govern our analysis of this case. In light of the expedited schedule we adopt below, we will invite parties to

address this issue in legal memoranda filed prior to the hearing.

RSA 369-B:3-a refers to the necessity of "cost recovery" of any modification to PSNH generation facilities approved by the Commission. This raises questions concerning the commencement of recovery in light of RSA 378:30-a, the duration of the recovery period and the appropriateness of the SCRC recovery mechanism. These are also issues which we expect the parties to address in legal memoranda filed prior to the hearing.

Finally, we consider the procedural schedule proposed by the parties and Staff:

Data Requests to PSNH	Sept. 30, 2003, noon
Responses by PSNH	Oct. 6, 2003
Technical Session/Settlement Conf.	Oct. 8, 2003, 1:00 p.m.
Staff/Intervenor Testimony	Oct. 15, 2003
Data Requests to Staff/Intervenors	Oct. 17, 2003
Legal Memoranda	Oct. 20, 2003
Responses by Staff/Intervenors	Oct. 24, 2003
Merits Hearing	Oct. 27, 2003

According to Staff's letter reporting on the discussions at the technical session, the parties and Staff agreed to the service of discovery papers electronically and requested any necessary rules waivers.

This schedule will require the parties to conduct discovery and develop their testimony in an especially expedited time frame. As noted in Staff's letter, it is not clear at this point whether the stated premise for such a fast-paced proceeding - the possibility of Congress enacting certain tax credits that would be available to PSNH if the new boiler goes into service by the end of 2005 - remains valid. We instruct PSNH to advise the Commission and the parties in writing should it become aware of federal legislative developments that eliminate the need to complete the project by the end of 2005. In such circumstances, and as suggested by the Existing Wood-Fired Plants, we will entertain requests to modify the procedural schedule. Subject to that caveat, we determine that the proposed schedule is consistent with the public interest and therefore approve it. Inasmuch as electronic service of discovery papers will not disrupt the orderly proceeding of the Commission and is consistent with the public good, we waive pursuant to Puc 201.05 any contrary provisions of our rules.

Based upon the forgoing, it is hereby

ORDERED, that the procedural schedule and rules waivers set forth above are approved.

By order of the Public Utilities Commission of New
Hampshire this twenty-fifth day of September, 2003.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary